Supreme Court, U.S.
FILED
OCT 20 1995
OFFICE OF THE CLERK

No. 95-323

In The

Supreme Court of the United States

October Term, 1995

UNITED STATES OF AMERICA,

Petitioner,

vs.

THOMAS R. NOLAND, TRUSTEE FOR DEBTOR
FIRST TRUCK LINES, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Bankruptcy Court in a Chapter 7 case properly exercised its discretion under 11 U.S.C. § 510(c)(1) to equitably subordinate non-pecuniary loss tax penalty claims against a liquidated corporate debtor to the claims of general unsecured creditors who suffered actual pecuniary losses.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Thomas R. Noland, Trustee for Debtor First Truck Lines, Inc. (the "Trustee"), respectfully requests that this Court deny the petition of the United States for a writ of certiorari (the "Petition") to review a judgment of the United States Court of Appeals for the Sixth Circuit in this case. The opinion of the court of appeals (Pet. 1a-22a) is reported at 48 F.3d 210. The opinion of the district court (Pet. 26a-33a) is not reported. The opinion of the bankruptcy court (Pet. 34a-55a) is reported at 141 Bankr. 621. This case involves matters which were correctly

decided in the lower courts and do not present "special and important reasons" which warrant granting certiorari. S. Ct. R. 10.1.

STATUTES INVOLVED

The statutes involved are 11 U.S.C. § 503(b)(1)(B) and (C), 11 U.S.C. § 507(a)(1), 11 U.S.C. § 510(c)(1), and 11 U.S.C. § 726(a). The relevant portions of these statutes are set forth in Petitioner's Appendix (Pet. 56a- 58a).

STATEMENT OF THE CASE

First Truck Lines, Inc. ("FTL") filed its Chapter 11 petition on April 10, 1986 (Pet. 2a). FTL's Chapter 11 plan was confirmed by order entered June 2, 1987 (Resp. App., *infra*, 3a). The non-pecuniary loss tax penalty claims in issue are for the tax period ending December 31, 1987 (Resp. App., *infra*, 7a) and for the post-confirmation tax quarters ended September 30, 1987, March 31, 1988, and June 30, 1988, respectively (Resp. App., *infra*, 7a). The case was converted to Chapter 7 on August 1, 1988, and Thomas R. Noland was appointed Trustee for FTL (Pet. 2a). Petitioner and the Trustee applied to the bankruptcy court for a determination of the priority, if any, to be accorded to those non-pecuniary loss tax penalty claims (Resp. App., *infra*, 11a, 12a). The bankruptcy court found that the penalty claims were administrative expenses (Pet. 40a, 53a), but held that the non-pecuniary loss tax penalty claims should be subordinated (Pet. 49a, 50a, 54a, 55a). The district court affirmed (Pet. 33a), and the Sixth Circuit Court of Appeals affirmed the decision of the district court that the bankruptcy court properly exercised its discretion to equitably subordinate the post-petition non-pecuniary loss tax penalty claims of the Internal Revenue Service ("IRS") against a liquidated corporate debtor to the actual pecuniary loss claims of general unsecured creditors (Pet. 20a).

REASONS FOR DENYING WRIT

This case does not present special and important reasons which warrant granting certiorari. There is no constitutional question, no conflict with this Court's decisions, no conflict with the decision of another United States court of appeals on the same matter, and no error in statutory interpretation or application.

1. This case does not involve any issues of constitutional law. It involves only the narrow issue of whether under 11 U.S.C. § 510(c)(1) the bankruptcy court properly exercised its discretion to equitably subordinate post-petition non-pecuniary loss tax penalty claims to the claims of general unsecured creditors who suffered actual pecuniary losses, when the assets of the debtor which the penalty was intended to punish or deter have been liquidated and the debtor has ceased operations.

2. There is no conflict with this Court's decisions. The Bankruptcy Act of 1898, as amended, contained no provision as to equitable subordination of claims analogous to 11 U.S.C. § 510(c)(1), which became effective on October 1, 1979. The decision of the court of appeals which applied 11 U.S.C. § 510(c)(1) to equitably subordinate the non-pecuniary loss tax penalty claims of the IRS against a liquidated corporate debtor to the actual pecuniary loss claims of general unsecured creditors therefore does not conflict with this Court's decisions.

3. There is no conflict with the decision of another United States court of appeals on the same matter. To the contrary, each court of appeals which has addressed the issue has concluded that equitable subordination under 11 U.S.C. § 510(c)(1) of non-pecuniary loss tax penalty claims against a liquidated corporate debtor does not require a finding of inequitable conduct. *Matter of Virtual Network Services Corp.*, 902 F.2d 1246 (7th Cir. 1990);

Schultz Broadway Inn v. United States, 912 F.2d 230 (8th Cir. 1990). By previously agreeing with those decisions, Petitioner recognized that courts continue to develop the principles of equitable subordination and admitted that cases which pre-date the enactment of the Bankruptcy Code are no longer binding.[1]

4. There is no error in the statutory interpretation or application of 11 U.S.C. § 510(c)(1). Petitioner erroneously focuses on the timing of when its claim arose rather than on the two salient factors which squarely align the decision of the court of appeals in this case with the decisions of the other two courts of appeals which have considered whether non-pecuniary loss tax penalty claims against a corporate debtor which has liquidated its assets and ceased operations may be equitably subordinated to the claims of general unsecured creditors:

a. Petitioner's claims are for non-pecuniary loss tax penalties.

b. The corporate debtor has liquidated its assets and ceased operations.

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1. Petitioner conceded in *Burden v. United States*, 917 F.2d 115 (3rd Cir. 1990), a case involving an *individual* debtor in a Chapter 13 case and therefore having broader ramifications than the case at bar, that creditor misconduct is not a prerequisite to the equitable subordination of non-pecuniary loss tax penalty claims under 11 U.S.C. § 510(c)(1). 917 F.2d at 119. Petitioner's argument (Pet. 19-22) that there is a conflict among the decisions of courts of appeals which pre-date the enactment of the Bankruptcy Code after acknowledging the correctness of the decisions of the courts of appeals which interpret section 510(c)(1) of the Bankruptcy Code is therefore not only disingenuous, it is improper. After expressly agreeing that *Virtual Network*, *supra*, was correct and that government misconduct was not a prerequisite to the subordination of non-pecuniary loss tax penalty claims of the IRS, *Burden*, 917 F.2d at 119 n.13, Petitioner should not now be permitted to state that the courts of appeals which have adopted that position are in error and in conflict with decisions which pre-date the enactment of the Bankruptcy Code and the application of 11 U.S.C. § 510(c)(1) which is controlling in this case.

The first two courts of appeals to consider whether non-pecuniary loss tax penalty claims could be equitably subordinated to the claims of general unsecured creditors both involved corporations which had filed liquidating Chapter 11 plans. *Matter of Virtual Network Services Corp.*, 902 F.2d 1246, 1247 (7th Cir. 1990); *Schultz Broadway Inn v. United States*, 912 F.2d 230, 231 (8th Cir. 1990). It is the liquidation of the corporate debtor, *coupled with* the punitive nature of the tax penalty claims which do not compensate for actual pecuniary loss, which provides the basis for equitable subordination in appropriate cases.

"The penalty provisions in the tax code are expressly meant to deter and punish: two goals in contravention of any equity or equitable considerations." *Virtual Network*, 902 F.2d at 1249. That court recognized the inherent unfairness of allowing the IRS's non-pecuniary loss tax penalty claims to come out of the "pockets" of general unsecured creditors who had not been paid their pecuniary losses. *Id.* at 1250.

> .... In Chapter 11 proceedings, Congress expected that many debtors would continue their operations under a reorganization plan and ultimately return to a viable and profitable economic state [Citation omitted]. In such cases, the debtor, quite rightly, should bear the burden of its full punitive obligations. Where a Chapter 11 debtor opted to liquidate, however, the consequences to creditors could be very similar to a proceeding under Chapter 7.

Schultz Broadway Inn, 912 F.2d at 233.

The rationale of the *Virtual Network* and *Schultz Broadway Inn* decisions was so compelling that the IRS shortly thereafter

conceded in *Burden v. United States*, 917 F.2d 115 (3rd Cir. 1990), that subordination pursuant to 11 U.S.C. § 510(c)(1) would be proper without government misconduct[2] as long as there is a case by case determination of the relative equities of the competing claims. 917 F.2d at 119.[3] The court of appeals in this case properly followed *Virtual Network, supra*, a case with which the IRS has expressly agreed,[4] in interpreting and applying 11 U.S.C. § 510(c)(1) and concluding that the bankruptcy court properly balanced the equities in equitably subordinating Petitioner's non-pecuniary loss tax penalty claims against the liquidated corporate debtor to the claims of general unsecured creditors.

SUMMARY OF ARGUMENT

1. The post-petition non-pecuniary loss tax penalty claims of the IRS against the liquidated corporate debtor were properly subordinated in this case. The provisions of 11 U.S.C. § 510(c)(1) are expressly made applicable to all distributive provisions of 11 U.S.C. § 726, and the legislative history to

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2. This concession is consistent with congressional intent. "Congress contemplated that section 510(c)(1) would be used to subordinate claims involving *either* inequitable conduct *or* claims such as penalties that were of a 'status susceptible to subordination.'" *Schultz Broadway Inn v. United States*, 912 F.2d 230, 233 (8th Cir. 1990). No government misconduct is necessary in order to subordinate claims of a status susceptible to subordination, such as non-pecuniary loss tax penalty claims. *See* 124 Cong. Rec. H11,095 (Sept. 28, 1978) (statement of Rep. Edwards); 124 Cong. Rec. S17,412 (Oct. 6, 1978) (statement of Sen. DeConcini), *infra* at 10-11.

3. Unlike *Virtual Network, supra*, *Schultz Broadway Inn, supra*, and this case, each of which involved corporate debtors which liquidated their assets and ceased operations, *Burden* involved an individual debtor in a Chapter 13 case who might have been punished or deterred by a tax penalty claim. The court of appeals therefore reversed and remanded the case to the district court so that the equities of the various claims could be balanced. 917 F.2d at 120-21.

4. *Burden v. United States*, 917 F.2d at 119 n. 13.

section 510(c)(1) supports the application of that statutory provision to penalty claims. Because the IRS tax penalty claims do not arise from any pecuniary loss and because the tax penalty claims will not punish or deter the debtor which has liquidated all of its assets and ceased operations, equitable subordination of the non-pecuniary loss tax penalty claims of the IRS to the claims of general unsecured creditors who suffered actual pecuniary losses was proper in this case.

2. The circuit courts of appeal which have considered the issue uniformly agree that the subordination of non-pecuniary loss tax penalty claims under 11 U.S.C. § 510(c)(1) to the claims of general unsecured creditors who suffered actual pecuniary losses may be proper in certain cases involving a liquidated corporate debtor. Because the application of the principles of equitable subordination is determined on a case by case basis, the question presented does not significantly affect the administration of the bankruptcy laws and is not of substantial recurring importance.

I.

THE POST-PETITION NON-PECUNIARY LOSS TAX PENALTY CLAIMS OF THE IRS AGAINST THE LIQUIDATED CORPORATE DEBTOR WERE PROPERLY SUBORDINATED TO THE CLAIMS OF GENERAL UNSECURED CREDITORS IN THIS CASE.

A. Post-Petition Non-Pecuniary Loss Tax Penalty Claims Are Subject to the Equitable Subordination Provisions of 11 U.S.C. § 510(c)(1).

Although Petitioner states that "[t]he question presented in this case is ... not whether 'principles of equitable subordination' *may* be applied to priority claims" (Pet. 11), that is the precise issue which Petitioner seeks to address. Petitioner's

argument that "the doctrine of equitable subordination does not authorize a 'reweighing' of the balance of equities that Congress itself struck in providing the statutory priority for post-petition tax penalty claims" (Pet. 24) runs counter to Petitioner's initial focus and seeks to nullify the subordination provisions of 11 U.S.C. § 510(c)(1).

As a preliminary matter, it should be noted that chapter 5 of the Bankruptcy Code, which includes 11 U.S.C. § 510(c)(1), applies to cases under chapter 7, 11, 12, or 13 of title 11 of the United States Code. 11 U.S.C. § 103(a). The text of 11 U.S.C. § 726 leaves no doubt that the subordination provisions of 11 U.S.C. § 510 apply to the distributive provisions of Chapter 7:

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
>
> (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title . . . .

11 U.S.C. § 726. When the language of the Bankruptcy Code is plain, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The fact that *all* claims, including administrative expense claims allowed under 11 U.S.C. § 503(b) which have been granted priority under 11 U.S.C. § 507(a)(1), are subject to the equitable subordination provisions of 11 U.S.C. § 510(c)(1)[5] *notwithstanding* the priority of distribution of

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5. Section 510(c)(1) of the Bankruptcy Code, 11 U.S.C. § 510(c)(1), provides in pertinent part:

> (c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—
>
> (Cont'd)

property of the estate in Chapter 7 cases was succinctly summarized by Judge Batchelder in her concurring opinion:

> Section 726(a) explicitly, clearly, and unambiguously makes the distribution of the property of the estate subject to the provisions of § 510. Post-petition non-pecuniary loss tax penalties are therefore subject to equitable subordination. End of story.

(Pet. 22a).

There is nothing in 11 U.S.C. § 510(c)(1) which requires a finding of inequitable conduct or which freezes principles of equitable subordination in time by forever prohibiting courts of equity from making precedent even though new circumstances might warrant it. To the contrary, Congress not only contemplated that the status of a claim might be sufficient to warrant subordination, it also expressly left to the courts the development of the principles of equitable subordination.

> It is intended that the term "principles of equitable subordination" follow existing case

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(Cont'd)

> (1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim
>
> . . . .

Had Congress desired to exclude administrative expense claims allowed under 11 U.S.C. § 503(b) from the operation of 11 U.S.C. § 510(c), it could easily have drafted the statute as follows:

> (c) *Except as provided in section 503(b) of this title, and* notwithstanding subsections (a) and (b) of this section . . . .

> law and *leave to the courts development of this principle*. To date, under existing law, a claim is generally subordinated only if [the] holder of such claim is guilty of inequitable conduct, *or the claim itself is of a status susceptible to subordination, such as a penalty* . . . .

(Emphasis added). 124 Cong. Rec. H11,095 (Sept. 28, 1978) (statement of Rep. Edwards); 124 Cong. Rec. S17,412 (Oct. 6, 1978) (statement of Sen. DeConcini). The legislative history thus directly contradicts Petitioner's assertion that "[t]he history of Section 510(c) thus reflects that Congress consciously elected to adopt only the 'existing' principles of equitable subordination and rejected a broader equitable authority for the bankruptcy courts" (Pet. 18).[6]

Petitioner's efforts to exclude post-petition non-pecuniary loss tax penalty claims in Chapter 7 cases from the application of 11 U.S.C. § 510(c)(1) is contrary to both the text of that statute and its legislative history. The IRS's argument that equitable subordination ignores congressional mandates for priority in reality ignores the congressional mandates under 11 U.S.C. § 726(a) that these priorities are explicitly subject to 11 U.S.C. § 510(c)(1). Equitable subordination of non-pecuniary loss tax penalty claims is not inconsistent with the Bankruptcy Code if the Bankruptcy Code itself specifically authorizes it.

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6. This Court has previously determined that in the absence of a conference and in light of the key roles played by the Senate and House floor managers, Senator DeConcini and Representative Edwards, their floor statements on the Bankruptcy Code may be treated as persuasive evidence of congressional intent. *Begier v. United States*, 496 U.S. 53, 64 n. 5 (1990).

B. Subordination of Post-Petition Non-Pecuniary Loss Tax Penalty Claims Against a Liquidated Corporate Debtor to the Claims of General Unsecured Creditors Is Proper in this Chapter 7 Case.

Contrary to Petitioner's assertions (Pet. 8, 19), the court of appeals did not hold that tax penalty claims are automatically to be subordinated to all other claims, nor did the court of appeals categorically "reorder statutory priorities" (Pet. 18). The court of appeals merely held that the subordination under 11 U.S.C. § 510(c)(1) of post-petition non-pecuniary loss tax penalty claims, against a liquidated corporate debtor, to the actual pecuniary loss claims of general unsecured creditors was proper. The decision does not ensure "that claims for post-petition penalties will not be paid from the assets of bankruptcy estates" (Pet. 23) because the decision does not affect the value of the assets to be distributed; it merely affects the order of distribution. Furthermore, the decision does not allow debtors in possession "to disregard their legal obligations with impunity" (*Id.*). Those obligations remain, and the IRS may avail itself of any remedy it believes appropriate, including a motion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. § 1112(b), if a debtor in possession disregards its obligations.[7]

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7. In the present case, the IRS was lax in monitoring and enforcing taxpayer compliance by FTL. Penalties accrued during the one year period *post-confirmation* (Resp. App., *infra*, 3a, 7a) before the debtor, moved to convert the case to Chapter 7 (Pet. 2a). General unsecured creditors were not in a position to monitor FTL's failure to timely pay taxes after FTL's Chapter 11 plan was confirmed. The IRS should have monitored FTL to determine if its tax returns were timely filed and if taxes were timely paid.

If the non-pecuniary loss tax penalties are not subordinated, the IRS will be rewarded for not doing its job because the longer the IRS delays enforcing compliance, the larger the penalties, and the larger the penalties, the larger the

(Cont'd)

In considering whether to subordinate non-pecuniary loss tax penalty claims, courts must weigh the equities on a case by case basis. *Matter of Virtual Network Services Corp.*, 902 F.2d 1246, 1250 (7th Cir. 1990); *Schultz Broadway Inn v. United States*, 912 F.2d 230, 234 (8th Cir. 1990); *Burden v. United States*, 917 F.2d 115, 120 (3rd Cir. 1990). The decision of the court of appeals in this case does not affect the ability of the IRS to recover on account of its actual pecuniary loss claims for unpaid taxes and interests. (Pet. 20a). The fact that the non-pecuniary loss tax penalty claims of the IRS arose post-petition does not alter their punitive character. These penalties are meant to deter and punish, in contravention of any equity or equitable considerations. *See Virtual Network*, 902 F.2d at 1249. FTL's assets have been liquidated and FTL has ceased operations (Pet. 2a). Assessing non-pecuniary loss "tax penalties against the estate of a debtor no longer in existence serves no punitive purpose" (Pet. 19a), and will deter no conduct because no further conduct of FTL will occur.

"The goal of equitable subordination focuses not on the conduct of the creditor but on fairness to creditors in a particular case." *Virtual Network*, 902 F.2d at 1250. In this particular case, the bankruptcy court properly balanced the equities of all claims,

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(Cont'd)
IRS share of any distribution. Equitable subordination under 11 U.S.C. § 510(c)(1) is proper because the IRS could have avoided the accrual of the non-pecuniary loss tax penalty claims, and those claims should not be paid at the expense of general unsecured creditors who suffered actual pecuniary losses and were not in a position to monitor or enforce taxpayer compliance.

Not only will subordination encourage the IRS to do its job better, subordination may not affect the amount of revenues which the IRS collects from *all* sources. If the non-pecuniary loss tax penalties are subordinated, the general unsecured creditors of the debtor will receive payment which must be recognized as taxable gain by those creditors.

not just the priority of the claims of the IRS. First, the parties who are punished by the penalty claims in a Chapter 7 liquidation or in a liquidating Chapter 11 case would be other creditors rather than the defunct debtor because payment of the penalty claims would reduce estate assets available for distribution. Second, the Bankruptcy Code favors compensating actual loss claims rather than non-pecuniary loss claims. Third, the total amount of assets to be distributed in this case would fully compensate only the first priority claim holders and would be distributed on a *pro rata* basis to the second priority claim holders. Therefore, the equities tilt in favor of subordinating the post-petition non-pecuniary loss tax penalty claims of the IRS to the claims of general unsecured creditors in this Chapter 7 case (Pet. 48a - 50a).

II.

THE QUESTION PRESENTED DOES NOT SIGNIFICANTLY AFFECT THE ADMINISTRATION OF THE BANKRUPTCY LAWS AND IS NOT OF SUBSTANTIAL RECURRING IMPORTANCE.

In the sixteen years since the Bankruptcy Code became effective in 1979, this is the only case decided by a court of appeals to address the issue whether pre-conversion administrative expense non-pecuniary loss tax penalty claims against a liquidated corporate debtor may be subordinated pursuant to 11 U.S.C. § 510(c)(1) to the claims of general unsecured creditors who suffered actual pecuniary losses. The paucity of reported decisions involving identical facts demonstrates that the question presented does not significantly affect the administration of the bankruptcy laws.

Petitioner expansively refers not only to federal, state and local tax laws but also to other governmental programs in order to argue that the scope of the doctrine of equitable subordination is a

matter of substantial recurring importance. Petitioner fails to explain, however, why the scenarios it seeks to conjure up have failed to materialize. The answer is simple. The principles of equitable subordination embodied in 11 U.S.C. § 510(c)(1) are applied on a case by case basis. *Matter of Virtual Network Services Corp.*, 902 F.2d 1246, 1250 (7th Cir. 1990); *Schultz Broadway Inn v. United States*, 912 F.2d 230, 234 (8th Cir. 1990); *Burden v. United States*, 917 F.2d 115, 120 (3rd Cir. 1990); *United States v. Noland*, 48 F.3d 210, 218 (6th Cir. 1995) (Pet. 20a) ["Section 726(a)(1) does not require automatic subordination .... As with every claim for equitable subordination under Section 510(c), the bankruptcy court must weigh the equities involved."]

Congress recognized that the development of the principles of equitable subordination is best left to the courts. 124 Cong. Rec. H11,095 (Sept. 28, 1978) (statement of Rep. Edwards); 124 Cong. Rec. S17,412 (Oct. 6, 1978) (statement of Sen. DeConcini). Over time, patterns may emerge which affect the administration of the bankruptcy laws or which give rise to questions of substantial recurring importance. Such is not the case here, however. The bankruptcy court correctly found that the unique facts of this case warranted the equitable subordination under 11 U.S.C. § 510(c)(1) of the post-petition pre-conversion non-pecuniary loss tax penalty claims of the IRS against the liquidated corporate debtor to the actual pecuniary loss claims of general unsecured creditors (Pet. 55a). The question which the courts below answered does not significantly affect the administration of the bankruptcy laws and is not of substantial recurring importance.

REASONS FOR NOT REVIEWING THE CASE IN TANDEM WITH *UNITED STATES V. REORGANIZED CF&I FABRICATORS OF UTAH, INC.*

The issues presented in *United States v. Reorganized CF&I Fabricators of Utah, Inc.*, 53 F.3d 1155 (10th Cir. 1995), *petition for cert. filed*, 64 U.S.L.W. 3161 (U.S. Aug. 24, 1995) (No. 95-325), are not "closely analogous" to the issues in this case as stated in the Petition (Pet. (I)). In *Reorganized CF&I*, the primary issue is whether the pre-bankruptcy claim of the IRS under 26 U.S.C. § 4971(a) for failure to make a pension funding payment is entitled to priority under 11 U.S.C. § 507(a)(7)(E). The secondary issue is whether that general unsecured claim should be subordinated to the claims of general unsecured creditors who suffered pecuniary losses, principally the Pension Benefit Guaranty Corporation as the largest creditor. The latter issue is only peripherally related to whether non-pecuniary loss tax penalty claims against a liquidated corporate debtor should be subordinated under 11 U.S.C. § 510(c)(1) to the pecuniary loss claims of general unsecured creditors.

CONCLUSION

The Court should deny the Petition.

Respectfully submitted,

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APPENDIX A — COPY OF PAGE 4 OF THE BANKRUPTCY COURT DOCKET SHEET (DOCKET NO. 86-00925), ENTRIES 95 THROUGH 131

FIRST TRUCK LINES, INC. 86-00925 P4
DOCKET NUMBER

Entry	Date	Bankruptcy Proceeding Record
95	3-5-87	Order setting time for hearing on approval of proposed disclosure statement if obj are filed and if the proposed disclosure statement is approved fixing date for hearing on confirmation of plan and Applications for compensation and requiring issuance of notice (EOD 3-6-87) Hearing date 4-22-87 at 9:00 A.M.
96	3-20-87	Objection to Plan – Clark County Oil Co.
97	4-14-87	Objection to Plan – Indiana Dept. of State Revenue's.
98	4-15-87	Objection to confirmation of amended plan. IRS
99	4-22-87	Hearing on Objection to Disclosure Statement Held. *Amended Disclosure Statement to be filed.*
100	4-23-87	Financial statement for 1-31-87.
101	4-23-87	Financial statement for 2-28, 1987.

Appendix A

Entry	Date	Bankruptcy Proceeding Record
102	4-24-87	Plan of reorganization as modified. (PL #4)
103	4-27-87	Order approving disclosure statement as modified.
104	4-27-87	Modified disclosure statement approved as containing adequate information.
105	5-5-87	Certificate of mailing modified Disclosure Statement.
106	5-7-87	Supplemental application of counsel for compensation.
107	5-7-87	Notice of applications of counsel for debtor for compensation.
108	5-26-87	Report of ballots on plan of reorganization.
109	5-26-87	Financial statement for March 31, 1987.
110	5-26-87	Financial statement for April 30, 1987.
111	5-27-87	HEARING HELD. MR. DONAHUE TO SUBMIT CONFIRMATION ORDER WITHIN ONE WEEK. ATTY. FEES APPROVED. MR. DONAHUE TO SUBMIT ORDER RE: ATTORNEY FEES WITHIN ONE WEEK.

Appendix A

Entry	Date	Bankruptcy Proceeding Record
112	6-2-87	Order confirming plan of reorganization as modified.
113	6-2-87	Order for post Confirmation reports.
114	6-2-87	Order for final report & application for final decree.
115	6-10-87	Order allowing compensation.
116	6-25-87	Financial statement for may, 1987
117	6-25-87	Cert. of service.
118	7-19-87	Financial Report for 6 month period ending 6-30-87
119	8-19-87	Debtor's objection to claim of T.W. Inman, Inc.
120	8-19-87	Debtor's objection to claim of L.H. Smith Oil Corp.
121	8-20-87	Amendment to schedule A-3
122	8-20-87	Application for order approving & allowing claims & Admins. expenses.
123	8-25-87	Order approving and allowing claims & Administrative expenses.

Appendix A

Entry	Date	Bankruptcy Proceeding Record
124	8-26-87	ORDER FOR HEARING 9-25-87 11:00 A.M.
125	8-26-87	Computer Notice re: Amendment to Schedules filed 8-20-87
126	9-17-87	Notice of filing of exhibit and witness list.
127	9-17-87	Witness list A.
128	9-18-87	Debtor's response to order directing filing of certain documents.
129	9-25-87	HEARING NOT HELD, AGREED ORDER TO BE SUBMITTED BY MIKE CRAMAROSSO WITHIN ONE WEEK.
130	9-28-87	Financial statement for the period ending July, 1987.
131	9-30-87	Stipulation and agreement for allowance of claim of L.H. Smith Oil Corp.

APPENDIX B — REQUEST FOR PAYMENT OF INTERNAL REVENUE TAXES (PROOF OF CLAIM #102) FILED NOVEMBER 22, 1988

REQUEST FOR PAYMENT OF INTERNAL REVENUE TAXES

(Bankruptcy Code Cases — Administrative Expenses)

Department of the Treasury/Internal Revenue Service

United States Bankruptcy Court for the Southern District of OH

In the Matter of:

FIRST TRUCK LINES, INC
1500 FARR DR
DAYTON OH 45404

Fiduciary:

Case Number
38600925

Type of Bankruptcy Case
Chap. 7

Date of Petition
04/10/86

Taxpayer Identifying Number
Social Security Number
Employer identification Number
illegible

Appendix B

1. The undersigned, whose business address is *P.O. Box 1579, CINCINNATI, OH 45201,* is the agent of the Department of Treasury, Internal Revenue Service, and is authorized to make this request for payment on behalf of the United States.

2. Request is made for payment of taxes and any interest or penalty due under the internal revenue laws of the United States, as shown below.

3. The ground of liability is taxes due under the internal revenue laws of the United States.

Appendix B

Administrative Claims

Kind of Tax	*Tax Period*	*Tax Due*	*Accrued Interest as of 10 Days from the Date of this Request*	*Accrued Penalty as of 10 Days from the Date of this Request*	*Balance Due*
FUTA	12/31/87	3,055.66	478.62	175.18	3,709.46
FUTA	12/31/88	1,750.00	.00	.00	1,750.00
WT-FICA	09/30/87	16,423.86	3,029.20	8,586.02	28,039.08
WT-FICA	03/31/88	21,075.52	2,698.49	589.80	24,363.81
WT-FICA	06/30/88	24,862.92	4,848.18	7.40	29,718.50
CORP-INC	12/31/87	300.00	.00	.00	300.00

Appendix B

*** ESTIMATED TAX CLAIMS HAVE BEEN FILED BECAUSE THE DEBTOR HAS FAILED TO FILE THE RETURN(S) FOR THE ESTIMATED PERIODS. AS SOON AS THE DEBTOR FILES THE RETURN(S) WITH THE I.R.S. AS REQUIRED BY LAW, THIS CLAIM WILL BE ADJUSTED AS NECESSARY.**

Amount due as of 10 days from date of this request $87,880.85

Compound interest will accrue at the rate established under IRC Section 6621(b). Contact Chief, Special Procedures function at *see below* for balance due if paid after *11/28/88*. Dollar amount per month at which late payment penalty will be charged (at 1/2 of 1 percent a month) after 10 days from the date of this request $67,467.96

Penalty for Presenting Fraudulent Claim — Fine of not more than $5,000 or Imprisonment for not more than 5 years or both — Title 18, U.S.C., Section 152.

Signature
s/ Marilyn J. Hicks

Title
Manager, Procedures & Insolvency Unit

Date
11/18/88

Telephone Number
(513) 684-2442

APPENDIX C — STIPULATION OF THE TRUSTEE AND THE UNITED STATES OF AMERICA RELATING TO ALLOWANCE OR DISALLOWANCE OF CLAIMS OF THE INTERNAL REVENUE SERVICE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 3-86-00925

Chapter 7

Judge Thomas F. Waldron

IN RE:

FIRST TRUCK LINES, INC.,

Debtor.

STIPULATION OF THE TRUSTEE AND THE UNITED STATES OF AMERICA RELATING TO ALLOWANCE OR DISALLOWANCE OF CLAIMS OF THE INTERNAL REVENUE SERVICE

The United States of America and the Trustee have agreed to certain facts that are stipulated to for the purposes of the hearing regarding the allowance or disallowance of the claims of the Internal Revenue Service set for February 7, 1992 at 10:30 A.M. The stipulated facts are as follows:

1. The Debtor filed for Chapter 11 relief on April 10, 1986.

2. On July 1, 1986, the Internal Revenue Service ("IRS")

filed its Proof of Claim, which was dated June 30, 1986, and which was marked number 51 by the Clerk (Exhibit A).

3. On February 20, 1987, the IRS filed a Request for Payment of Administrative Expenses, which was numbered 75 by the Clerk (Exhibit B).

4. On July 13, 1987, the IRS filed its Proof of Claim, which was numbered 85 by the Clerk, and which stated that it was "Amendment #1 to the proof of claim dated 6-30-86" (Exhibit C).

5. The Debtor moved to convert the proceedings to Chapter 7 in June, 1988 and an order converting the proceedings to Chapter 7 was entered on August 1, 1988.

6. The bar date for filing claims in the Chapter 7 proceeding was December 1, 1988.

7. On November 22, 1988, the IRS filed a Request for Payment of Administrative Expenses which was numbered 102 by the Clerk. The amounts claimed in said proof of claim involved claims accruing post-petition and pre-conversion, for taxes, interest and penalties. This Request for Payment did not involve any claims made in previous claims or requests filed by the IRS in this case (Exhibit D).

8. On April 20, 1989, the IRS filed a Request for Payment of Administrative Expenses which was numbered 107 by the Clerk (Exhibit E).

9. On August 7, 1991, the Trustee filed his Objection to the Proofs of Claim and the Requests for Payment.

10. The United States filed its opposition to the Trustee's objection on August 31, 1991, and the Trustee filed his response on September 13, 1991.

11. The parties agree that this Court has jurisdiction to determine the claims and requests of the IRS.

12. The parties agree that claim number 85 should be allowed, except for the amount of $13,415.20 for estimated claims relating to Highway Use taxes for the period of July 31, 1984. The parties agree that the penalties contained in claim number 85, which were pre-petition penalties, are subordinated pursuant to Section 726(a)(4) of the Code. The remaining liabilities set forth in claim number 85 will be allowed as a Section 507(a)(7) priority claim.

13. The parties agree that the tax and interest amounts of the Request for Payment number 102 will be allowed as an administrative expense claim with priority under Sections 503(b), 507(a)(1) and 726(a)(1). The parties agree that the Court should determine the priority, if any, of the penalties related to Request for Payment number 102.

14. The parties agree that the tax and interest claims made in Request for Payment number 107 involving quarters ending December 31, 1986 (WT-FICA) for $964.80 and December 31, 1987 (WT-FICA) for $74,670.39, are claims not raised in previous claims and should be subordinated pursuant to Section 726(a)(3). The parties agree that the Court should determine the priority, if any, of the penalties related to Request for Payment number 107.

15. The parties agree that as to Request for Payment number

107, the quarters ending September 30, 1986 (WT-FICA) for $264.51, September 30, 1987 (WT-FICA) for $28,039.08, March 31, 1988 (WT-FICA) for $24,363.81, June 30, 1988 (WT-FICA) for $29,718.50, and the FUTA tax for the year 1987 for $3,709.46, and Corporate Income Tax for the year 1987 for $300.00, were the same amounts claimed in previous claims timely filed in these proceedings.

16. The parties agree as to Request for Payment number 107 that the amount claimed for FUTA taxes for the year 1988 was greater in amount than the amount claimed in Request for Payment number 102 for the same year, and that Request for Payment number 102 delineated the 1988 year as being estimated. The Trustee maintains that the increased amount for FUTA taxes should not be allowed, and the United States maintains that the increased amount for FUTA taxes should be allowed as an administrative expense. The parties agree that if Request for Payment number 107 is allowed as an amended claim, that the Court should determine the priority, if any, of the penalties included in Request for Payment 107.

s/ Pamela M. Stanek
Pamela M. Stanek-0030155
Assistant U.S. Attorney
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(513) 225-2910

s/ Thomas R. Noland
Thomas R. Noland-0018239
Attorney for Trustee
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